



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0146]

RIN 1625-AA87

Security Zones; Port Canaveral Harbor, Cape Canaveral Air Force Station, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to expand the geographical boundaries of a permanent security zone at Port Canaveral Harbor. This action is necessary to ensure the security of vessels, facilities, and the surrounding areas within this zone. This rule is intended to prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within the security zone unless authorized by the Captain of the Port (COTP) Jacksonville or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2017-0146 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Allan Storm, Sector Jacksonville, Waterways Management Division, U.S. Coast Guard; telephone (904) 714-7616, email Allan.H.Storm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

II. Background, Purpose, and Legal Basis

On October 3, 1988, the Coast Guard published a final rule creating a permanent security zone at Port Canaveral Harbor, Cape Canaveral, Florida (53 FR 38718) to safeguard the waterfront and military assets along the U.S. Navy's Poseidon Wharf inside the southeast portion of Port Canaveral Harbor's Middle Basin. This waterfront area is located on Cape Canaveral Air Force Station (CCAFS), a U.S. Air Force military installation. Additionally, the northern and northeast portion of the Middle Basin's waterfront is located almost entirely on CCAFS property, and within this area are piers utilized by the U.S. Air Force and U.S. Army. CCAFS routinely conducts operations critical to national security.

The U.S. Navy requested to amend the current regulation in 33 CFR 165.705(b) to expand the geographical boundaries to include the northern and northeastern portion of the Middle Basin of Port Canaveral Harbor in order to ensure the safety and security of military assets and infrastructure along the entire CCAFS waterfront.

The COTP Jacksonville has determined it is necessary to expand the security zone to ensure the security of military assets and waterfront facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents or other causes of a similar nature, while still allowing for safe navigation within the Middle Basin of Port Canaveral Harbor. The proposed expanded geographical boundaries would encompass the entire CCAFS waterfront in the middle basin, with a perpendicular boundary distance from the shore varying from approximately 120 feet to 665 feet. The purpose of the proposed rule is to ensure the security of vessels, facilities, and the surrounding areas within the security zone. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The Coast Guard proposes to expand the geographical boundaries of the current regulated area in 33 CFR 165.705(b) to include the navigable waters of the Port Canaveral Harbor's Middle Basin. The proposed amendment would redesignate § 165.705(b) to new § 165.705(a)(2) and would read as follows: "Security Zone B. Middle Basin, Port Canaveral Harbor, at Cape Canaveral Air Force Station, Brevard County, Florida. All waters within the following coordinates inside the Middle Basin: starting at Point 1 in position 28° 24' 54.49"N, 80° 36' 39.13"W; thence south to Point 2 in position 28° 24' 53.27"N, 80° 36' 39.15"W; thence east to Point 3 in position 28° 24' 53.25"N, 80° 36' 30.41"W; thence south to Point 4 in position 28° 24' 50.51"N, 80° 36' 30.41"W; thence southeast to Point 5 in position 28° 24' 38.15"N, 80° 36' 17.18"W; thence east to Point 6 in position 28° 24' 38.16"N, 80° 36' 14.92"W; thence northeast to Point 7 in position 28° 24' 39.36"N, 80° 36' 13.37"W; thence following the land based perimeter boundary to the point of origin."

The proposed rule would also make the following amendments: (1) change the title of the existing regulation in 33 CFR 165.705 from “Port Canaveral Harbor, Cape Canaveral, Florida” to “Security Zones: Port Canaveral Harbor, Cape Canaveral Air Force Station, FL;” (2) add a new paragraph (c) and change the title to “(c) Regulations;” (3) redesignate existing paragraph (d) as new paragraph (c)(1) with minor non-substantive changes; (4) redesignate existing paragraph (c) as new paragraph (c)(2) with minor non-substantive changes; (5) and add a new paragraph (c)(3), which states: “Persons desiring to enter, transit through, anchor in, or remain within the security zone may request permission from the COTP Jacksonville by telephone at 904-714-7557, or a designated representative via VHF-FM radio on channel 16. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Jacksonville or the designated representative.” Lastly, we propose to add a new paragraph (b), entitled “Definitions” and propose a new definition for the term “designated representative.”

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of

quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See the OMB Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

The economic impact of this proposed rule is not significant. Although persons and vessels may not enter, transit through, anchor it, or remain within the security zone without authorization from the COTP Jacksonville or a designated representative, they may operate in the navigable water adjacent to the proposed security zone and the Federal channel.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described

in E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, the Coast Guard discusses the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. The proposed rule involves expanding the geographical boundaries of a permanent security zone

that will prohibit entry within certain navigable waters of the Port Canaveral Harbor's Middle Basin.

Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

Public participation is essential to effective rulemaking, and the Coast Guard will consider all comments and related materials received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.705 to read as follows:

§ 165.705: Security Zones: Port Canaveral Harbor, Cape Canaveral Air Force Station, FL

- (a) **Regulated areas.**

(1) Security Zone A. East (Trident) Basin, Port Canaveral Harbor, at Cape Canaveral Air Force Station, Brevard County, Florida. All waters of the East Basin north of latitude 28°24'36"N.

(2) Security Zone B. Middle Basin, Port Canaveral Harbor, at Cape Canaveral Air Force Station, Brevard County, Florida. All waters within the following coordinates inside the Middle Basin: Starting at Point 1 in position 28° 24' 54.49"N, 80° 36' 39.13"W; thence south to Point 2 in position 28° 24' 53.27"N, 80° 36' 39.15"W; thence east to Point 3 in position 28° 24' 53.25"N, 80° 36' 30.41"W; thence south to Point 4 in position 28° 24' 50.51"N, 80° 36' 30.41"W; thence southeast to Point 5 in position 28° 24' 38.15"N, 80° 36' 17.18"W; thence east to Point 6 in position 28° 24' 38.16"N, 80° 36' 14.92"W; thence northeast to Point 7 in position 28° 24' 39.36"N, 80° 36' 13.37"W; thence following the land based perimeter boundary to the point of origin. These coordinates are based on North American Datum 1983.

(b) Definitions. The term “designated representative” means personnel designated by or assisting the Captain of the Port (COTP) Jacksonville in the enforcement of the security zone. This includes Coast Guard Patrol Commanders, Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels and federal, state, and local law officers designated by or assisting the COTP Jacksonville in the enforcement of regulated navigation areas and security zones.

(c) Regulations.

(1) The general regulations governing security zones found in 33 CFR 165.33 apply to the security zones described in paragraph (a) of this section.

(2) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the security zone unless authorized by the COTP Jacksonville or a designated representative.

(3) Persons desiring to enter, transit through, anchor in, or remain within the security zone may request permission from the COTP Jacksonville by telephone at 904-714-7557, or a designated representative via VHF-FM radio on channel 16. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Jacksonville or the designated representative.

Dated: September 28, 2017

T. C. Wiemers,
Captain, U.S. Coast Guard,
Captain of the Port Jacksonville.
[FR Doc. 2017-21230 Filed: 10/2/2017 8:45 am; Publication Date: 10/3/2017]